

MATERIALS RELATING TO RECOMMENDATIONS OF
THE SELECT COMMITTEE ON HOMELAND SECURITY
ON CHANGES TO THE RULES OF THE HOUSE OF
REPRESENTATIVES WITH RESPECT TO
HOMELAND SECURITY ISSUES



SELECT COMMITTEE ON
HOMELAND SECURITY

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RECOMMENDATIONS OF THE SELECT COMMITTEE ON HOMELAND SECURITY ON CHANGES TO THE RULES OF THE HOUSE OF REPRESENTATIVES WITH RESPECT TO HOMELAND SECURITY ISSUES

THE NEED FOR A PERMANENT STANDING COMMITTEE ON HOMELAND SECURITY

The 9/11 terrorists exploited longstanding policy, structural, and programmatic gaps in America's homeland security caused by the separation of foreign from domestic intelligence, the division of "national security" and "law enforcement" information and activities, and the stove-piped and uncoordinated nature of our multi-agency border and transportation security systems. Since then, Congress and the President have collaborated in a fundamental re-focusing of executive branch agencies to close those gaps, particularly by creating the Department of Homeland Security (DHS), but also through a wide variety of other initiatives, such as the Terrorist Threat Integration Center (TTIC), the Terrorist Screening Center (TSC), and the proposed National Intelligence Director (NID) and National Counterterrorism Center (NCTC).

Despite this significant Executive Branch reorganization, Congressional structures

remain almost the same as they were before the 9/11 attacks. Scores of committees and subcommittees of the Congress have some claim to jurisdiction over various elements of the Department of Homeland Security (DHS), with six standing committees claiming some jurisdiction over critical border security functions of the Department. This creates chaos for the Department. Since January 2004, senior officials from the Department have had to testify at more than 160 Congressional hearings – an average of 20 each month.

Creating a permanent standing Committee on Homeland Security, commencing in the 109th Congress, is necessary if the House of Representatives is effectively to meet its legislative and oversight responsibilities with respect to homeland security programs and activities, particularly those of DHS. The current diffused and unfocused congressional jurisdiction over the Department of Homeland Security, and homeland security in general, not only imposes extraordinary burdens on the Department, but makes it far more difficult for the Congress to guide the Department's activities

RECOMMENDATIONS OF THE
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in a consistent and focused way that promotes integration and eliminates programmatic redundancies, and advances implementation of a coherent national homeland security strategy. Current legislative “silos” foster – and, if left unchanged, will continue to foster – fragmentation within DHS as it struggles to build a new common culture focused squarely on the homeland security mission.

For these reasons, not only the 9/II Commission, but virtually every other commission and outside expert has recognized that effective and efficient legislation and oversight with respect to homeland security requires congressional reorganization that vests in a single standing committee in each chamber jurisdiction that parallels the homeland security mission of preventing, preparing for, and responding to acts of terrorism in the United States. A select committee, while appropriate in certain situations, would not be conducive to fostering the clear lines of accountability and responsibility that are necessary when dealing with the variety and cross-cutting nature of homeland security programs and activities situated largely in a single Department.

The success of this endeavor requires that the new standing committee have legislative

and oversight jurisdiction broad enough to ensure that it can take a holistic approach toward homeland security issues, and that the unnecessarily heavy burden the Department of Homeland Security now bears in interacting with a vast array of committees and subcommittees in both houses of the Congress is drastically reduced.

In carrying out this consolidation, it is important to craft the right balance between the jurisdiction of the new standing Committee on Homeland Security and that of existing committees. The Homeland Security Act of 2002 offers a congressionally-created road map to jurisdictional reform that focuses on the structure, organization, capabilities, and mission of the Department itself. The House must reorganize the committee structure so that the new homeland security mission is provided sustained and consistent attention.

RECOMMENDATIONS ON CHANGES TO RULE X WITH RESPECT TO HOMELAND SECURITY

Pursuant to House Resolution 5, the Select Committee on Homeland Security makes the following recommendations for changes to Rule X regarding the reorganization of jurisdiction within the House with respect to homeland security matters:

RULE X

Organization of Committees

COMMITTEES AND THEIR LEGISLATIVE JURISDICTIONS

- I. There shall be in the House the following standing committees, each of which shall have the jurisdiction and related functions assigned by this clause and clauses 2, 3, and 4. All bills, resolutions, and other matters relating to subjects within the jurisdiction of the standing committees listed in this clause shall be referred to those committees, in accordance with clause 2 of rule XII, as follows:
 - (a) **Committee on Agriculture.** ...
[no changes]
 - (b) **Committee on Appropriations.** ...
[no changes]
 - (c) **Committee on Armed Services.** ...
[no changes]
 - (d) **Committee on the Budget.** ...
[no changes]

(e) **Committee on Education and the Workforce. ...**

[no changes]

(f) **Committee on Energy and Commerce. ...**

Add at end: "In the case of each of the foregoing, the committee's jurisdiction shall not include responsibilities of the Department of Homeland Security."

(g) **Committee on Financial Services. ...**

Add at end: "In the case of each of the foregoing, the committee's jurisdiction shall not include responsibilities of the Department of Homeland Security."

(h) **Committee on Government Reform. ...**

[no changes]

(i) **Committee on House Administration. ...**

[no changes]

(j) **Committee on International Relations. ...**

Add at end: "In the case of each of the foregoing, the committee's jurisdiction shall not include responsibilities of the Department of Homeland Security."

(k) **Committee on the Judiciary. ...**

(8) Immigration and naturalization (except for Department of Homeland Security responsibility for security of United States borders and ports of entry, including the Department's responsibilities for visas and other forms of permission to enter the United States, and immigration enforcement).

(18) Subversive activities affecting the internal security of the United States (except for responsibilities of the Department of Homeland Security).

(l) **Committee on Resources. ...**

[no changes]

(m) **Committee on Rules. ...**

[no changes]

(n) **Committee on Science. ...**

[no changes]

(o) **Committee on Small Business. ...**

[no changes]

(p) **Committee on Standards of Official Conduct. ...**

[No changes]

(q) **Committee on Transportation and Infrastructure.**

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(1) Non-homeland security missions of the Coast Guard, including lifesaving service, lighthouses, lightships, ocean derelicts, and the Coast Guard Academy.

(2) Federal management of natural disasters.

(18) Related transportation regulatory agencies (except for responsibilities of the Department of Homeland Security).

(20) Transportation, including railroads, water transportation, transportation safety (except automobile safety), transportation infrastructure, transportation labor, and railroad retirement and unemployment (except revenue measures related thereto); in each case exclusive of the responsibilities of the Department of Homeland Security.

(22) Civil aviation, including safety and commercial impact of security measures.

(r) **Committee on Veterans' Affairs.** ...

[no changes]

(s) **Committee on Ways and Means.** ...

(I) Customs revenue functions, including with respect to collection districts and ports of entry and delivery. ...

GENERAL OVERSIGHT RESPONSIBILITIES

[no changes]

SPECIAL OVERSIGHT FUNCTIONS...

[no changes]

* * * * *

PERMANENT SELECT COMMITTEE ON INTELLIGENCE

...

II. (a)(I) There is established a Permanent Select Committee on Intelligence (hereafter in this clause referred to as the "select committee"). The select committee shall be composed of not more than 18 Members, Delegates, or the Resident Commissioner, of whom not more than 10 may be from the same party. The select committee shall include at least one Member, Delegate, or the Resident Commissioner from each of the following committees:

- (A) the Committee on Appropriations;
- (B) the Committee on Armed Services;
- (C) the Committee on Homeland Security;
- (D) the Committee on International Relations; and
- (E) the Committee on the Judiciary. ...

COMMITTEE ON HOMELAND SECURITY

12. (a)(1) There is hereby established a permanent standing Committee on Homeland Security (hereafter in this clause referred to as the “committee”), which shall be composed of not more than 29 Members, Delegates, or the Resident Commissioner, of whom not more than 16 may be from the same party.
- (2) The Speaker and the Minority Leader shall be ex officio members of the committee but shall have no vote in the committee and may not be counted for purposes of determining a quorum thereof.
- (3) The Speaker and Minority Leader each may designate a member of his leadership staff to assist him in his capacity as ex officio member, with the same access to committee meetings, hearings, briefings, and materials as employees of the committee and subject to the same security clearance and confidentiality requirements as employees of the committee under applicable rules of the House.
- (b) There shall be referred to the committee proposed legislation, messages, petitions, memorials, and other matters related to –
- (1) **Homeland security generally.**
- (2) **The Department of Homeland Security (except with respect to Federal management of natural disasters, the non-homeland security missions of the Coast Guard, and immigration and naturalization matters unrelated to homeland security).**
- (3) **The integration, analysis, and sharing of homeland security information related to the risk of terrorism within the United States.**
- (4) **The dissemination of terrorism threat warnings, advisories, and other homeland security-related communications to State and local governments, the private sector, and the public.**
- (5) **Department of Homeland Security responsibility for research and development in support of homeland security, including technological applications of such research.**

- (6) Department of Homeland Security responsibility for security of United States borders and ports of entry (unrelated to customs revenue functions), including the Department's responsibilities related to visas and other forms of permission to enter the United States.**
 - (7) Enforcement of Federal immigration laws (except for responsibilities of the Department of Justice).**
 - (8) Security of United States air, land, and maritime transportation systems.**
 - (9) Customs functions, other than customs revenue functions.**
 - (10) Department of Homeland Security responsibility for Federal, state, and local level preparation to respond to acts of terrorism.**
- (c) In addition to the general oversight responsibilities described in clause 2, the committee shall review, study, and coordinate on a continuing basis laws, programs, and Government activities related to all aspects of homeland security.
 - (d) The committee shall have exclusive authorizing and primary oversight jurisdiction with respect to the Department of Homeland Security's responsibilities and activities related to the prevention of, preparation for, and response to acts of terrorism within the United States. The committee also shall have jurisdiction over the other responsibilities and activities of the Department of Homeland Security, except as specified in subsection (b) (2).
 - (e) Subject to the Rules of the House, funds may not be appropriated for a fiscal year, with the exception of a bill or joint resolution continuing appropriations, or an amendment thereto, or a conference report thereon, to, or for use of, the Department of Homeland Security to prevent, prepare for, or respond to acts of terrorism in the United States, unless the funds shall previously have been authorized by a bill or joint resolution passed by the House during the same or preceding fiscal year to carry out such activity for such fiscal year.
 - (f) No referrals of legislation, executive communication, or any other action taken in the 108th Congress with regard to the Select Committee on Homeland Security or any other committee of the House shall be considered to be a precedent for referrals of any homeland security-related measures in the current Congress.

Respectfully submitted by the undersigned, comprising majorities of both the Republican and Democratic members of the Select Committee on Homeland Security:

Chris Carney

Jim Gohmert

Luft Phil

Louise Slaughter

Christopher Shays

Karen McCarthy

Ernst P. L. Smith

Norm Dicks

Robert D. E. Smith

Robert E. Smith

Anda M. Hovav

Ben Rayburn

Mr. T. J. Egan

Thom Tillis

Jim L. Higgins

John

John E. Dingell

Joe L. Manly

Jim Langerin

Ray Hanger

Jimmie Dunn

J. M. Christie

Leatha Sandberg

John Madeg

James Hanna

Sam Camp

Clara Hunt

Jim Langerin

Edward H. Norton

Bill Powell

Bob Eberly

Ben Lucas

Ben Chandler

Kendrick B. Noel

Barnes Cook

Edward G. McKinney

Mark London

Boeing

Boeing

SUPPLEMENTARY MATERIALS

Al Qaeda's terrorist attacks on September 11, 2001 caught the U.S. Government **unprepared**, resulting in a staggering loss of 2,800 innocent human lives. Three years later, the congressionally-chartered National Commission on Terrorist Attacks Upon The United States (9/11 Commission) observed that, prior to 9/11, neither Congress nor the Executive branch had reorganized itself to deal with post-Cold War threats and that neither had treated terrorism as a top priority. The Commission concluded that both the Congress and the executive branch needed to be restructured to reflect the priority of terrorist and other significant transnational threats to our national security and to counter them effectively.

The imperative to consolidate congressional jurisdiction over the Department of Homeland Security, and homeland security generally, derives from several major events and developments that followed the 9/11 terrorist attacks:

- President Bush and Congressional leaders declared international terrorism to be an **enduring top-priority national security threat** requiring a strong and permanent counterterrorism focus across the Federal agencies.
- In June 2002, the President proposed the **establishment of the Department of**

Homeland Security – the largest Federal reorganization in 55 years – to integrate 22 Federal agencies and to serve as a focal point for implementing his National Strategy on Homeland Security. Congress created the new Department five months later, in November 2002, with passage of the Homeland Security Act.

- In January 2003, the Speaker of the House of Representatives, J. Dennis Hastert, responding to both the new threat and the new Department, formed a 50-Member **Select Committee on Homeland Security** to sharpen the focus of multiple House committees and subcommittees with oversight over legacy components of the Department of Homeland Security, and to recommend any permanent change to jurisdiction on homeland security within the House. The Select Committee and its Appropriations Committee counterparts represent the most conspicuous structural changes in the Congress since 9/11 that respond to the continuing threat to our homeland posed by international terrorism.
- **Secretary Ridge**, testifying before the Select Committee on Homeland Security on February 12, 2004, stated: "I think it goes without saying that a streamlined process of oversight and accountability, in my judgment, would do both the executive branch and the legislative branch a world of good."

- In July 2004, the **9/11 Commission** joined numerous national security experts, as well as former Speakers of the House Gingrich and Foley, in concluding that today's unfocused Congressional jurisdiction over homeland security matters has not been effective, and in recommending establishment of a **permanent standing committee in both the House of Representatives and the Senate**.
- In August 2004, **President Bush** endorsed the 9/11 Commission's call for a restructuring of Congressional jurisdiction. There are "**too many committees**" with jurisdiction, he said, which resulted in DHS appearing before various committees and subcommittees of the Congress roughly 160 times between January and September 2004.
- The 9/11 Commission recommended that Congress create a single, principal point of oversight and review for homeland security and that **Homeland Security should be a permanent standing committee**, and not a select committee.

CONGRESS AND HOMELAND SECURITY

The recommendation for a permanent standing Committee on Homeland Security is compelling in large part because it is undiluted common sense. Since the 9/11 attacks, our national priorities have changed irrevocably.

In the process, the term "homeland security" entered the vernacular, capturing our new, overriding national mission: to protect the American people, territory, and way of life from terrorist attack.

The U.S. Government clearly was engaged in homeland security activities before the 9/11 attacks, but the Government's efforts were piecemeal, lacked a counterterrorism focus, and, at least with respect to the 9/11 attacks, were ineffectual in preventing a catastrophic attack. The creation of the Department of Homeland Security rectified those shortcomings in the executive branch and focused homeland security-related activities for the future. Congress did not make parallel changes to focus its legislative and oversight responsibilities. Nonetheless, some Members still maintain that the Congress, as presently structured, can effectively exercise its constitutional legislative and oversight responsibilities for homeland security, including for the Department of Homeland Security and its constituent entities, programs, and activities.

As the 9/11 Commission's Report observes:

"[O]n certain issues, other priorities pointed Congress in a direction that was unhelpful in meeting the threats that were emerging in the months leading up to 9/11. Committees with oversight responsibility for aviation focused overwhelmingly on airport congestion and the economic health of the airlines, not aviation security. Committees with

responsibility for the INS focused on the Southwest border, not on terrorists. ...

Even in congressional committees responsible for national security, “[t]errorism was a second- or third-order priority” (9/11 Commission Report at pp.106-07).

Terrorism is now a first-order priority in Congress, the Executive branch, and among the American people. Global terrorism is recognized as a fundamental threat to our people, territory, and way of life for the foreseeable future. The Executive branch has been reconfigured in light of that reality. Congress, however, has not. The result has been uncoordinated oversight and conflicting legislative guidance – effecting a tacit enhancement of Executive branch authority over homeland security policy, programs, and activities. Congress must, in short, fundamentally reform itself or become largely irrelevant where homeland security matters are concerned.

Congress’s current disarray is counterproductive and unsustainable. The Department does not require the disparate guidance of some 88 separate committees and subcommittees across the Congress. Congress dilutes its own influence over homeland security matters – burdening both Members and the Department in the process – by perpetuating such an inefficient jurisdictional array. The work of two successive select

committees focused on homeland security has given practical evidence of the utility of consolidating congressional jurisdiction over homeland security matters in general, and the Department of Homeland Security in particular.

That is not to say that everything every entity in the Department does is “homeland security.” As is evident in the Homeland Security Act and the actual Rule X language set forth, entities like FEMA and the Coast Guard, and topics like immigration, have both security and non-security aspects to them. The Congress does not need to consolidate jurisdiction over all such entities and subject matter, but rather must ensure that the homeland security elements of such entities and topics are dealt with systematically and efficiently. The dividend will be a measurable enhancement of our nationwide homeland security effort.

Those steeped in the homeland security policy and congressional processes, regardless of their political affiliation, agree that consolidation is necessary. For example, the Markle Foundation Task Force on National Security in the Information Age stated, in its October 2002 Report, that “the ideal approach would be to form standing committees on homeland security. ... [I]t is the only way to assure sensible, effective congressional oversight and responsibility.” The congressionally-chartered Gilmore Commission’s fourth report made the same point in even stronger terms:

"The Congress is still not well organized to address issues involving homeland security in a cohesive way. ... Jurisdiction for various aspects of this issue continues to be scattered over dozens of committees and subcommittees. We therefore restate our prior recommendation with a modification ... That each House of the Congress establish a separate authorizing committee and related appropriation subcommittee with jurisdiction over Federal programs and authority for Combating Terrorism/Homeland Security." (4th Report, page 50, December, 2002)

Nearly two years later, testifying before the Select Committee on Homeland Security on the 9/11 Commission's Report, Vice Chair Lee Hamilton put it bluntly:

"[Y]ou are at a crunch point, and ... if another incident were to happen – and the Congress had done nothing to put its own House in order – I think the institution, and maybe some of you individually, would be criticized for not acting. In other words, I think there is a political risk here

"[Y]ou have to get your house in order so that you can have robust oversight over the Department of Homeland Security. The Department of Homeland Security needs your advice and counsel. Secretary Ridge said, 'I want to be able to come to one expert body of the Congress and lay out my problems, tell them what we've done, tell them what we haven't done and get their advice and counsel.' Secretary Ridge prefers this rather than going to

88 subcommittees – 88 subcommittees! That really is absurd, and it is simply not fair to the Executive branch to make them do that." (Hearing, Select Committee on Homeland Security, August 17, 2004)

Former Speakers Gingrich and Foley both testified to precisely the same effect. Speaker Gingrich commented, with his characteristic insight:

"88 committees and subcommittees for one department? By one count, 412 members of the House serve on a committee or a subcommittee with some right to jurisdiction, 100 of the senators? I mean not a single senator is left without an opportunity to ask Secretary Ridge what he's doing.

"Now, that's just an absurdity, and it's a violation of our survival requirements.

* * *

"My suggestion is first that you have to have a single standing committee. ... And, so, I think at the earliest date this Congress, this House has to make clear there will be a standing committee, it will have real authority.

* * *

"And I think we have some obligation to organize the Congress in parallel with organizing the executive branch. And I know that's very risky even for those of us who are not here but used to be to come back up here and say we actually have to look at ourselves as well as cheerfully look down the street at the executive branch.

"But in the case of homeland security, it is going to someday be literally life and death. And I think we'd all want to be able to look back and say to our children and

our grandchildren we did the right now,
not we did the easy thing.”

(Hearing, Select Committee on
Homeland Security, Subcommittee on
Rules, September 9, 2003)

Speaker Foley added a note of sympathy
for the Department: “[T]here’s not only a
need to bring some focus and scope to the
oversight function, but there is a critical need
to avoid the distraction of members of this new
Department from having to respond day-by-
day to dozens and dozens of different requests
for testimony” (*ibid.*).

These experts’ bottom line is unambiguous:
Congressional jurisdiction over homeland
security and the Department of Homeland
Security, in particular, must be consolidated
in a standing committee in each House that
focuses squarely on the Department’s mission
of preventing, preparing for, and responding
to acts of terrorism in the United States.

SUMMARY OF
ACTIVITIES OF THE
SELECT COMMITTEE ON
HOMELAND SECURITY

The Rules of Procedure established by the Select Committee on Homeland Security provide for a Subcommittee on Rules (“Subcommittee”) to conduct the Rules Study required under Section 4(b)(3) of H. Res. 5. The Subcommittee, under the leadership of Chairman Lincoln Diaz-Balart and Ranking Member Louise Slaughter, heard testimony from and consulted with leading experts on Congress, conferred with Members and staff of interested standing committees, examined the findings of authoritative outside commissions, and obtained guidance from current and former Executive branch officials with relevant experience. These activities and views are summarized below.

HEARINGS ON HOUSE REFORM

In the summer and fall of 2003 and the spring of 2004, the Subcommittee on Rules held four separate hearings to examine whether, and if so what changes were needed in the rules of the House to successfully address the issue of homeland security.

1. LESSONS FROM THE PAST

On May 19, 2003, the Subcommittee on Rules held a hearing entitled “Perspectives on House Reform: Lessons from the Past.” At this hearing, Charles Johnson, who was then serving as House Parliamentarian, testified about the issues and challenges associated with

prior committee reorganizations. In addition, Norman Ornstein of the American Enterprise Institute for Public Policy Research, and Thomas Mann of The Brookings Institution testified.

Mr. Johnson’s testimony was largely informational and provided members with useful historical background on other efforts to restructure and reorient committee jurisdictional assignments, as well as observations concerning current jurisdictional overlaps relating to the issue of homeland security. Mr. Mann and Mr. Ornstein recommended the eventual creation of a permanent standing committee on homeland security. They favored giving such a committee shared and overlapping jurisdiction to provide “historical memory, expertise and competing perspectives on homeland security matters,” and to make sure that dual functions of entities like the Customs Service, the Coast Guard and the Animal and Plant Inspection Service do not “get lost or perverted along the way.” Finally, Mann and Ornstein recommended that “the Speaker establish his own coordination mechanism regulating the required testimony of DHS officials before committees and subcommittees ... to prevent the debacle of executives facing demands to testify in front of dozens of panels, often on the same subjects, draining valuable time from their efforts to protect the home front without any incremental addition to Congress’s knowledge base or ability to fulfill its own responsibilities.”

2. STANDING UP A MAJOR FEDERAL AGENCY

On Thursday, July 10, 2003, the Subcommittee held a hearing entitled, “Perspectives on House Reform: Standing Up A Major Federal Agency (Department of Energy).” The first witness was the Honorable James Schlesinger. As the very first Secretary of the Department of Energy, Mr. Schlesinger offered a unique perspective on the attempts to reorganize the executive and legislative branches to deal with the energy crisis of the 1970s. The second panel of witnesses for this hearing was comprised of respected academics, including: Dr. James A. Thurber from American University, Mr. Donald Wolfensberger from the Woodrow Wilson International Center for Scholars, and Dr. David King from Harvard University. Without exception, the witnesses agreed with the need for changes to the rules of the House to address homeland security threats, and dedicated most of their testimony to discussing how the House committee structure and procedures should be changed to accommodate the creation of the Department of Homeland Security.

Secretary Schlesinger gave particularly poignant testimony. The former Director of

Central Intelligence, Secretary of Defense, and the first Secretary of Energy testified that “it will be a disaster for the incoming department unless you simplify its obligations to the Congress.” He emphasized that without reform Congress would be “...unnecessarily absorbing the time, of people in the new department.” While acknowledging that strong oversight must be carried out, Schlesinger warned against allowing “there to be too much captious criticism which results from everybody in the House having a piece of the action.” He expressed hope that Congress would “mak[e] the Select Committee a standing committee,” so that there would be “one committee ... that has a primary responsibility for the Department of Homeland Security,” and so that the Department “knows where to go.” Secretary Schlesinger also highlighted the shortsightedness of turf battles interfering with needed reform, stating that “[t]here are the cultural problems up here on the Hill of these different standing committees that have their traditions and their powers. And unless we effectively deal with that, the components of the Department of [Homeland Security] will not be able to focus on the newer problems of homeland security, those components will continue to respond to the older standing committees and their interests.”¹

¹ See Hearing Transcript, House Select Committee on Homeland Security, Subcommittee on Rules, “Perspectives on House Reform: Standing Up A Major Federal Agency (Department of Energy)” (July 10, 2003).

The second panel, which consisted of noted academics, took similar positions as the former Secretary. Mr. Wolfensberger stated in his testimony that:

...[T]he [terrorist] threat is so serious as to warrant a concentrated effort by both the executive and Congress to combat it. And that, in turn, requires having intensive and extensive coordination between and within the two branches, as well as with state and local units of government. ...

This level of coordination is not something that you can relegate to a subcommittee of an existing committee, let alone to dozens of existing committees and subcommittees having bits and pieces of jurisdiction. ...

You need a separate committee that is willing to set a new course and way of doing things: exercise top oversight, employ innovative thinking and exert constant pressure on the new department to set the right priorities and pursue them rigorously ...

This must be a permanent, standing committee, not a select committee. It should be a major committee for assignment purposes, if not an exclusive committee ...

It must have primary legislative as well as oversight authority over the Homeland Security Department, its

agencies, programs and activities. And it should also have secondary legislative and oversight jurisdiction over homeland security responsibilities lodged elsewhere in the government.”²

Mr. King also opined that a new Committee on Homeland Security “should be given primary responsibility, primary jurisdiction, over ...homeland security generally, and ... the Department of Homeland Security.” He noted the multiple existing committees of jurisdiction over the Department and testified that such “fragmentation is tremendously debilitating.”³

3. FORMER HOUSE LEADERS

On Tuesday, September 9, 2003, the Subcommittee on Rules of the Select Committee on Homeland Security held a hearing entitled, “Perspectives on House Reform: Former House Leaders.” Testifying at the hearing were former Speakers of the House Newt Gingrich and Tom Foley, former Chief Deputy Whip Rep. Robert S. Walker, and former Chairman and Ranking Member of the House Committee on Foreign Affairs and former Chairman of the House Permanent Select Committee on Intelligence Rep. Lee Hamilton. The hearing again focused on whether, and if so what, structural changes were necessary in the House to effectively

² *Id.*

³ *Id.*

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deal with the creation of the Department of Homeland Security.

The witnesses all expressed the urgency of the homeland security issue and the need to reform the House to effectively work with the executive branch to address the terrorist threat. Former Speakers of the House, Newt Gingrich and Tom Foley endorsed the immediate creation of a permanent standing committee on homeland security that would exercise primary legislative jurisdiction. Former Speaker Foley stated that “it is essential that there be a major committee, I would think a standing committee of the House, that has responsibility for authorization, for legislation, and for oversight of the Department of Homeland Security.”⁴ Speaker Gingrich emphasized that “Congress cannot meet its constitutional responsibilities unless it shows the same courage as the President in forcing through a real reorganization that does not entangle the Department of Homeland Security in a web five times more complex than the Department of Energy deals with. It is urgent that Congress also reorganizes its own structure now.”⁵ During his testimony

Former Speaker Gingrich also stated that “...at the earliest date this Congress, this House has to make clear there will be a standing committee, it will have real authority.”⁶

Former Members Lee Hamilton and Bob Walker also urged support for the creation of a permanent standing committee. Mr. Hamilton testified that “[t]he issue of Homeland Security is not temporary,” and that “necessary oversight cannot be supplied on an interim basis nor can it be effectively and efficiently disbursed among the current 13 full committees and 60 subcommittees in the House.” He opined that “[t]he creation of a Permanent Standing Committee on Homeland Security with primary legislative and oversight jurisdiction would enable the Congress to strengthen its organizational response to terrorism and enhance national security. ...”⁷ Mr. Walker stated that in his view “... the select committee [on Homeland Security] should become a standing committee with appropriate jurisdictions transferred to it.”

In support of their conclusions, each of the witnesses argued that DHS needs focused,

⁴ See *Hearing Transcript, House Select Committee on Homeland Security, Subcommittee on Rules, “Perspectives on House Reform: Former House Leaders”* (September 9, 2003).

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

centralized, and efficient oversight by one committee, rather than the existing pattern of overlapping, redundant, and unclear jurisdiction by multiple committees. Former Speaker Gingrich noted that "...[Congress] need[s] to have a clear mechanism to be able to have oversight, to have hearings, to have reportings in a timely and efficient manner so that [the Secretary of DHS] knows who he is working with, who can help him, and who he has to report to on the legislative side of our constitutional system."⁸ Mr. Hamilton agreed, suggesting that "...[o]verlapping jurisdiction sows confusion in the executive branch," and that "[i]f there is no Standing Committee on Homeland Security, then DHS officials will spend excessive time testifying in front of multiple committees with oversight and jurisdictional responsibilities."

The witnesses further argued that the House must adjust its approach to homeland security in the same way it has demanded the executive branch to restructure. Former Speaker Gingrich testified that Congress "[has] some obligation to organize the Congress in parallel with organizing the executive branch."⁹ Hamilton echoed this theme stating that

"Congress needs to reorient its own culture and its own organization to suit the mission of homeland security."¹⁰ Former Member Walker observed the particular need for the House to horizontally integrate policy decision-making rather than following the vertical organization of the current committee structure. His written statement concludes that:

"Instead of assuring better coordination for the horizontal programs needed at DHS, the continued rigid structures in Congress result in mixed signals and bifurcated policy input. In my view the select committee should become a standing committee with appropriate jurisdictions transferred to it. At that point, the department's policy request could be considered inside a proper framework with attention to the long-range implications of policy concepts. Such a committee also would be a true working partner with the appropriations subcommittee."

While firmly supporting the existence of a Committee on Homeland Security, the former Members also discussed limits on its authority. They supported the existing standing committees maintaining their jurisdiction over non-homeland security functions of the Department, but emphasized that a Committee on

⁸ See Hearing Transcript, House Select Committee on Homeland Security, Subcommittee on Rules, "Perspectives on House Reform: Former House Leaders" (September 9, 2003).

⁹ See Hearing Transcript, House Select Committee on Homeland Security, Subcommittee on Rules, "Perspectives on House Reform: Former House Leaders" (September 9, 2003).

¹⁰ *Id.*

Homeland Security must be empowered to share jurisdiction in any area where homeland security concerns arise. Former Speaker Gingrich supported a “a mission-driven jurisdiction,” such that “when there are questions of activities that are uniquely homeland security, protection, response, recovery, rehabilitation, [the Committee on Homeland Security] ought to have either sole or lead jurisdiction. But it ought to have the right to claim concurrent jurisdiction over problems as they impinge on homeland security.”¹¹ Hamilton echoed this approach, emphasizing in his written statement that:

“Each DHS agency has responsibilities that are directly relevant to homeland security and should be under the oversight and jurisdiction of a Committee on Homeland Security. But they also have responsibilities that are not primarily geared towards homeland security, and can remain under current oversight and jurisdictional arrangements. ... [A] new committee will not assume oversight and jurisdiction of areas not related to homeland security. Other committees will thus not cede all of their powers of oversight and jurisdiction over DHS agencies to a Standing Committee on Homeland Security.”

4. THE PERSPECTIVE OF COMMITTEE LEADERS

On Wednesday, March 24, 2004, the Subcommittee on Rules of the Select Committee on Homeland Security held a final hearing entitled “Homeland Security Jurisdiction: The Perspective of Committee Leaders.” The witnesses invited to testify at this hearing included the Chairmen and Ranking Members of all permanent committees with jurisdiction over components or functions of DHS. The response from these witnesses was mixed. While some of the leaders opposed the creation of a permanent committee focused on the issue of homeland security, most were not resistant to the general concept. For the majority of House committee leaders, the question was not whether to have a Committee on Homeland Security, but rather what the substance and scope of the committee’s jurisdiction should be.

INPUT FROM AUTHORITATIVE OUTSIDE SOURCES

In addition to the Rules Subcommittee hearings, numerous other think-tanks, commissions, and outside groups have examined the issue of a need for changes to the organization of the House

¹¹ See Hearing Transcript, House Select Committee on Homeland Security, Subcommittee on Rules, “Perspectives on House Reform: Former House Leaders” (September 9, 2003).

to address the homeland security challenge. Chief among them is the congressionally-chartered National Commission on Terrorist Attacks Upon the United States (the 9/11 Commission).

1. THE 9/11 COMMISSION

The bipartisan 9/11 Commission issued a report in July 2004, after more than a year of investigating the September 11th attacks, which summarized its findings and made recommendations for response. One of the 41 specific recommendations was the need for Congress to consolidate homeland security oversight in the legislative branch into one single committee.

The 9/11 Commission report notes that the leaders of the Department of Homeland Security currently may be required to appear before 88 committees and subcommittees of Congress. The report goes on to state that “Congress needs to establish for the Department of Homeland Security the kind of clear authority and responsibility that exists to enable the Justice Department to deal with crime....” Such oversight, the report stresses, is essential not only to allow the Department to

do its job, but to allow Congress to ensure that it will be held accountable.¹²

The Chair and Vice Chairman of the 9/11 Commission, the Honorable Thomas Kean and Lee Hamilton, also testified on this issue before the Select Committee on Homeland Security, emphasizing that consolidating oversight with respect to homeland security into a single committee in the House and Senate is imperative. Mr. Kean stated that “[i]f these agencies [within DHS] are allowed to go their own way or make use of multiple jurisdictions or not answer the questions properly from the Congress, then there is no oversight at all.” He suggested that such scattered oversight would mean “that people who should be spending their time protecting us all are spending an enormous amount of time testifying over a whole vast majority of committees.” Lee Hamilton testified similarly, stating that making DHS respond to 88 committees and subcommittees in the House and Senate was “absurd” and that it was “not fair to the executive branch to make them do that.”¹³

2. GILMORE COMMISSION

In addition to the 9/11 Commission, numerous other groups and organizations have weighed in on the issue of congressional organization in

¹² See “The 9/11 Commission Report” at 421.

¹³ *Id.*

light of the terrorist threat. The influential and congressionally-chartered Gilmore Commission, in a series of five reports issued over a four year period from 1999-2003, recommended that Congress reorganize its committee structure to “help to eliminate duplication in programs and funding, and to promote an effective national program.” The Gilmore Commission recommended that “each House of the Congress establish a separate authorizing committee and related appropriation subcommittee with jurisdiction over Federal programs and authority for Combating Terrorism/Homeland Security.”¹⁴

3. MARKLE FOUNDATION

In another influential study, the Markle Foundation recommended in a report issued in October 2002 that Congress should not only look at restructuring the Executive Branch, but should also look inward and reorganize its own structure to better address homeland security issues. The Markle Foundation report states that “the ideal approach would be to form standing committees on homeland security... to assure sensible, effective congressional oversight and responsibility.” The report emphasizes that:

“Congress has a responsibility to clarify its own process. When too many congressional committees have oversight responsibility, we end up with both too little and too much. There is insufficient institutional expertise in any committee to review and assess the effectiveness of a system on an ongoing basis, but when something goes wrong every committee wants to be involved in investigating and assessing blame.”¹⁵

4. COUNCIL ON FOREIGN RELATIONS

The Council on Foreign Relations (CFR) also has issued a recent report stating that “the proliferation of committees and subcommittees in Congress makes it hard to devise a coherent homeland security policy and a focused homeland defense system.” The report noted that Congress must “have a lead committee, or an effective joint committee to shape overall policy. Otherwise the system is likely to be fragmented and plagued with irrelevant spending.” The CFR Task Force recommended that the House “should transform the House Select Committee on Homeland Security into a standing committee and give it a formal, leading role in the authorization of all emergency responder expenditures in order to streamline the federal budgetary process.”¹⁶

¹⁴ Gilmore Commission, Report: “Implementing the National Strategy” (December 2002) at 50.

¹⁵ Markle Foundation, Report: “Protecting America’s Freedom in the Information Age” (October 2002) at 76.

¹⁶ See Council on Foreign Relations, Independent Task Force on Emergency Responders, Report: “Emergency Responders: Drastically Underfunded, Dangerously Unprepared” (June 2003) at 19.

EXECUTIVE BRANCH INPUT

Statements by President Bush and Secretary of Homeland Security Tom Ridge strongly support consolidating jurisdictional control in Congress over DHS and homeland security issues generally. In his public comments on the 9/11 Commission report on August 2, 2004, President Bush stated:

"The 9/11 Commission also made several recommendations about Congress itself. I strongly agree with the Commission's recommendation that oversight and intelligence--oversight of intelligence and of the homeland security must be restructured and made more effective. There are too many committees with overlapping jurisdiction, which wastes time and makes it difficult for meaningful oversight and reform. ...

"[Secretary Ridge] told me ... [h]e testified 140 different times [before Congressional committees and subcommittees. ... [I]t seems like it's one thing to testify and, therefore, to be [subject to] oversight; it's another thing to make sure that the people who are engaged in protecting America don't spend all their time testifying. And so there's going to be some important reforms. We look forward to working with Congress on the reforms."

During a budget oversight hearing before the Select Committee on Homeland Security in February, Secretary Ridge expressed frustration

with the excessive burden placed upon the Department in responding to Congressional oversight, stating:

"I appreciate the importance of not only oversight, but you have the power of the purse. So, I think rigorous oversight is very much an important part, and particularly a kind of partnership I think we've really developed over this committee and a few others. I think it goes without saying that a streamlined process of oversight and accountability, in my judgment, would do both the executive branch and the legislative branch a world of good. ...

Last year we testified, myself, the deputy, undersecretaries, I think in excess of 120 times. Good. And maybe we'd testify as many times if there was some form of consolidation and maybe we wouldn't. But, you know, I'm sure you know, there are probably 24 to 48 ... hours of preparation before you testify. ...

"I'm not going to sugarcoat it. Some form of consolidation, compression of the points of access and points of oversight, I think would do both the executive and legislative branch, we'd do a better job together and leave it at that."

Again, in more recent hearing before the Select Committee, Secretary Ridge reiterated his belief that the relationship between DHS and Congress would be "significantly enhanced, substantially improved ... if there was an effort within Congress to reduce the number of committees and subcommittees that have oversight over this department."

SUMMARY OF ACTIVITIES OF
THE SELECT COMMITTEE ON HOMELAND SECURITY

"To give you an example, Madam Chairman [Ms. Jennifer Dunn], this year so far the secretary, the undersecretary and the assistant secretaries generally have appeared nearly 160 times at hearings. They have been involved and many of our staff have been involved on the hill over 1,300 times for briefings."

"And literally we have hundreds and hundreds of General Accounting Office inquiries. And you know those are enormous, labor-intensive responses that we have to provide, understandably. So anything that the House will do to reduce not the intensity of the oversight, but the number of committees and subcommittees to which we report for oversight would certainly, we think, improve the effectiveness of our interaction and frankly make us a stronger department and more secure country."